



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, New York 11201*

July 2, 2012

The Honorable Nina Gershon
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Joshua Kestenbaum
Criminal Docket No. 04-821 (NG)

Dear Judge Gershon:

The government respectfully submits this letter to address a concern raised by the defendant in his letter of June 28, 2012; specifically, the time needed to prepare for the Violation of Probation hearing scheduled for July 9, 2012. A status conference is scheduled for July 3, 2012 at 10:00 a.m.

As noted by the Court at the status conference on June 22, 2012, the letter filed by the government on June 21, 2012 provided an unusually detailed statement of the government's proof with regard to Charge One of the Violation Report (false statements).

The government's evidence as to Charge Three (failure to pay restitution) is likewise detailed in pages 3 through 6 of its submission to the Court dated June 11, 2012. The proof with regard to Charge Three is clear-cut: it consists of the schedule of payments and non-payments with respect to the \$2,500 monthly restitution obligation, and the depositions and financial evidence identified in the government's June 21, 2012 and June 27, 2012 letters, and summarized in the government's June 11, 2012 letter.

Additionally, the government will present testimony at the hearing from both U.S. Probation Officer Carrie Borona, and Financial Litigation Unit Investigator Geoffrey Fig, in support of both Charges One and Three.

The government concedes that it may be difficult for the defendant to prepare to defend Charge Two (tax evasion) in the limited time before the July 9, 2012 hearing, as he may well need to retain an expert witness, among other things.

The government's proposal is to go forward with the hearing on July 9, 2012 with respect to Charges One and Three of the Violation Report, and to hold Charge Two in abeyance. Should the government prevail on either or both of the charges at next week's hearing, the government will move to dismiss Charge Two and proceed to sentencing on the violation(s) proven by a preponderance of the evidence.

However, if the hearing is adjourned, the government intends to prove all three charges in the Violation Report.

Respectfully submitted,

LORETTA E. LYNCH
United States Attorney
Eastern District of New York

By:


Ilene Jaroslaw
Bonni Perlin
Assistant U.S. Attorneys

cc: Alan S. Lewis, Esq. (via ECF)

U.S. Probation Officer Carrie Borona (via e-mail)